

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
(Austin Division)**

ABIGAIL NOEL FISHER; and
RACHEL MULTER MICHALEWICZ

Plaintiffs,

v.

UNIVERSITY OF TEXAS AT AUSTIN; *et al.*

Defendants.

Civil Action No. 1:08-cv-00263-SS

**STATEMENT OF FACTS IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

**PLAINTIFF'S STATEMENT OF FACTS IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs Abigail Noel Fisher and Rachel Multer Michalewicz, through their undersigned counsel, hereby submit this Statement of Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment pursuant to Federal Rule of Civil Procedure 56 and the Orders of this Court.

UT AUSTIN UNDERGRADUATE ADMISSIONS

1. UT Austin is selective in that each year the number of applicants seeking undergraduate admission exceeds the number of available spaces in the incoming freshman class.

(Compl. ¶ 25, Answer ¶ 25; Exhibit 6, Lavergne Dep. at 11; Exhibit 5, Ishop Dep. at 9.)

2. For the fall 2008 freshman class, UT Austin had 29,501 applicants, made 12,843 offers of admission, and enrolled 6,715 students.

(Exhibit 9, *Implementation and Results of the Texas Automatic Admission Law (HB 588) at the University of Texas at Austin*, Oct. 28, 2008, available at <http://www.utexas.edu/student/admissions/research/HB588-Report11.pdf> at 6, Table 1.)

3. UT Austin has stated that it is the mission of UT Austin "to provide an opportunity for students in the State of Texas, outside of the State of Texas, and internationally to achieve an excellent education [] at the University of Texas at Austin. The [admissions] policies are both legislative and internal. Legislatively, [UT Austin is] mandated to admit top ten percent students in the State of Texas ... [In addition, UT Austin has] developed internally an admissions policy geared towards admitting a diverse

class of students representative [of] all backgrounds and all walks to [its] freshman class.”

(Ex. 5 at 9.)

4. UT Austin has been recognized as one of the nation’s “top producers of undergraduates for Hispanics” by *Diverse Issues in Higher Education* magazine (“according to the May 31, 2007 edition of *Diverse Issues in Higher Education* magazine, . . . the university ranks 10th nationally among the magazine’s Top 100 producers of undergraduates for Hispanics”) and one of the nation’s “Best Schools for Hispanics” by *Hispanic Business* magazine.

(Exhibit 11, The University of Texas at Austin – *Rankings and Kudos*, available at <http://www.utexas.edu/welcome/rankings.html>.)

5. Several of UT Austin’s undergraduate academic programs have been ranked highly “[a]mong undergraduate academic programs in the top 100.” For example, Engineering ranks fifth for Hispanics; Mathematics ranks third for Hispanics; Biological and biomedical sciences ranks fourth for Hispanics; Social sciences ranks seventh for Hispanics; Area ethnic, cultural and gender studies ranks seventh for Hispanics; Computer and information science and support services rank 37th for Hispanics; English ranks 11th for Hispanics; and Psychology ranks 27th for Hispanics.

(Ex. 11.)

6. “Although the university enrolled the most ethnically diverse freshman class in its history during fall 2007 - 19.7 percent Hispanic students, 19.7 percent Asian-American students and 5.8 percent African-American students - it strives to continue building a diverse student body, faculty and staff that truly reflect Texas and the entire country.”

(Exhibit 21, Vincent Dep. Attachment.)

I. History of UT Austin Undergraduate Admissions

7. Over time, UT Austin has modified its undergraduate admissions policies in response to various judicial decisions, namely *Hopwood v. Texas* and *Grutter v. Bollinger*, and in accordance with legislation, namely “The Top Ten Percent Law” - House Bill 588, Section 51.803 of the Texas Education Code (with the accompanying administrative regulations promulgated by the Texas Higher Education Coordinating Board).

A. UT Austin Admissions Pre-*Hopwood*

8. In the years immediately prior to *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), UT Austin employed an admissions plan which combined use of an applicant’s predicted freshman grade point average and race-based affirmative action.

(Compl. ¶ 29, Answer ¶ 29; Ex. 5 at 54.)

9. An applicant's predicted freshman grade point average was calculated based on his standardized test scores (SATs and/or ACTs) and class rank.

(Compl. ¶ 28, Answer ¶ 28; Ex. 5 at 53.)

10. UT Austin's race-based affirmative action policy was designed to increase the enrollment of African-American and Hispanic students.

(Compl. ¶ 31, Answer ¶ 31.)

11. According to UT Austin, exclusive reliance on predicted freshman grade point average (without the race-based affirmative action policy) for admissions decisions "would have produced classes with unacceptably low diversity levels."

(Exhibit 25, *Implementation and Results of the Texas Automatic Admissions Law (HB 588) at The University of Texas at Austin*, Dec. 6, 2007 at 2; Compl. ¶ 30 Answer ¶ 30.)

12. The last class admitted under the pre-Hopwood policy was the freshman class of the summer/fall of 1996.

(Compl. ¶ 38, Answer ¶ 38; Exhibit 8, Walker Dep. at 11.)

13. UT Austin maintained application, admission, and enrollment figures for 1996.

(Ex. 25 at 4-5, Tables 1, 1a.)

Application Stage								
White				African-American				Total Students
Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
		10584	61.3%			809	4.7%	17263
Hispanic				Asian-American				
Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
		2492	14.4%			-		17263

Admission Stage								
White				African-American				Total Students
Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
		7167	62.6%			501	4.4%	11456
Hispanic				Asian-American				
Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
		1761	15.4%			-		11456

Enrollment Stage								
White				African-American				Total Students
Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
1497	2662	4159	64.7%	91	175	266	4.1%	6430
Hispanic				Asian-American				
Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
396	536	932	14.5%	430	512	942	14.7%	6430

B. The Hopwood Decision and Its Impact on UT Austin Admissions

14. *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), held that the use of race as a factor in the admissions process of the University of Texas Law School was unlawful.

(See also Ex. 8 at 11-12.)

15. The Attorney General for the State of Texas interpreted *Hopwood* as prohibiting the consideration of race as a factor in undergraduate admissions at UT Austin.

(Exhibit 26, Texas Attorney General, Letter Opinion No. 97-001, Feb. 5, 1997.)

16. Consequently, UT Austin ceased using race as a factor in its undergraduate admissions and thereby terminated the race-based affirmative action policy.

(Compl. ¶ 37, Answer ¶ 37.)

C. UT Austin's Full File Review Process

17. Beginning with the entering freshman class of 1997, UT Austin has evaluated applicants based on a determination of two numerical scores which represent an applicant's personal achievement and academic performance.

(Compl. ¶ 40, Answer ¶ 40; Ex. 8 at 11-13; Ex. 5 at 52-53.)

18. The full file review process was intended, among other things, boost minority enrollment.

(Ex. 8 at 13.)

19. UT Austin has characterized this as a "holistic" review process.

(Compl. ¶ 40, Answer ¶ 40; Ex. 8 at 11-13; Ex. 5 at 52-53.)

20. For each applicant, UT Austin computes an Academic Index (AI) and a Personal Achievement Index (PAI).

(Compl. ¶ 41, Answer ¶ 41.)

21. An applicant's AI is determined by using an equation which considers an applicant's (1) class rank; (2) completion of UT Austin required high school curriculum; (3) the extent to which the applicant exceeds UT Austin's required units; and (4) SAT/ACT score.

(Ex. 9 at 2.)

22. An applicant's PAI is determined by a review of the full application and is based on two scores: (1) essay scores; and (2) personal achievement score.

(Ex. 9 at 2-3.)

23. Essays and personal achievements are scored on a scale of one to six.

(Ex. 9 at 3.)

24. The equation for calculating an applicant's PAI is $[(\text{personal achievement score} * 4) + (\text{mean essay score} * 3)] / 7$.

(Ex. 9 at 3.)

1. Essays

25. Each applicant must submit two essays.

(Exhibit 17, Ishop Aff. ¶ 4.)

26. Essays are scored on a scale of one to six by trained readers who consider the complexity of thought, substantiality of development, and facility with language demonstrated by the essay.

(Exhibit 4, Bremen Dep. at 10.)

27. The two required essays are also considered separately as part of the personal achievement score.

(Ex. 4 at 17-18.)

28. Applicants may also submit an optional third essay to address exceptional hardships, challenges, or opportunities that have shaped or impacted your abilities or academic credentials, personal responsibilities, exceptional achievements or talents, educational goals, or ways in which you might contribute to an institution committed to creating a diverse learning environment.

(Exhibit 13, The University of Texas at Austin – *Admission Essays*, available at <http://bealonghorn.utexas.edu/admission/essays/index.html>.)

29. Optional third essays are not included in the essay score for PAI calculations, but are only considered as part of the review of an applicant's entire file.

(Ex. 5 at 78.)

30. Most students do not complete the optional third essay.

(Ex. 5 at 81.)

2. Personal Achievement Score

31. An applicant's personal achievement score is based on a "holistic" review of an applicant's leadership qualities; extracurricular activities; awards/honors; work experience; service to school or community; and special circumstances.

(Ex. 9 at 2; Exhibit 10, *Inter-rater Reliability of Holistic Measures Used in the Freshman Admissions Process of The University of Texas at Austin Summer/Fall 2005*, Feb. 22, 2005, available at <http://www.utexas.edu/student/admissions/research/Inter-raterReliability2005.pdf> at 4.)

32. Prior to the fall 2005 application cycle, UT Austin considered the following "special circumstances" when evaluating an applicant's personal achievement: socio-economic status of family; single parent home; language spoken at home; family responsibilities; socio-economic status of school attended; and average SAT/ACT score of school attended in relation to applicant's own SAT/ACT score.

(Ex. 9 at 2.)

33. Each factor considered in determining an applicant's personal achievement score is meaningful.

(Ex. 8 at 45.)

34. Each factor can make a difference to an applicant's personal achievement score.

(Ex. 8 at 53.)

35. Some applicants' scores are necessarily affected by individual factors.

(Ex. 5 at 67.)

36. In evaluating personal achievement, application file readers consider the breadth and depth of an applicant's factors.

(Ex. 5 at 18; Ex. 4 at 48.)

37. Starting with the fall 2005 application cycle, UT Austin added race as a special circumstance.

(Ex. 9 at 2.)

3. Training for Review of Essays and Applications

38. UT Austin requires yearly training, conducted by Dr. Brian Bremen (associate professor of English at UT Austin and consultant to the College Board and UT Austin's admissions office) for its essay readers and full file readers (who review an applicant's full file).

(Ex. 4 at 9, 12, 31; Ex. 17 ¶ 13.)

39. The essay and application file readers are trained in holistic scoring.

(Ex. 4 at 9, 12, 31.)

40. No reader may participate in the admissions process without attending Dr. Bremen's training session for that year.

(Exhibit 2, UT Austin's Response to Plaintiffs' Second Discovery Requests (Aug. 19, 2008), Response to Request for Admission 1.)

41. The goal of the training, which UT Austin classifies as "rigorous," is to develop consensus and uniformity in scoring.

(Ex. 5 at 82; Ex. 4 at 29.)

42. When UT Austin added race as a factor in admissions decisions, the manner in which UT Austin reviewed applications did not change. Race was simply added as another component to UT Austin's full file review and it became "part of the discussions in the training."

(Ex. 5 at 21.)

a. Essay Readers

43. For each annual training, Dr. Bremen selects approximately thirty-six sample essays for each essay topic.

(Ex. 4 at 27.)

44. Essay readers are given a set of essays, with scores pre-marked so that they can learn the differences in scoring.

(Ex. 4 at 27-28.)

45. Essay readers are then given sample essay sets to score, and repeat this process until there is a high degree of consistency of scoring across different readers.

(Ex. 4 at 28.)

46. The goal of the training is to ensure that all readers assign either the same score to any particular essay, or vary by no more than one point above or below the essay's actual score.

(Ex. 4 at 25.)

47. Essay readers are also given a scoring guide that describes typical characteristics of essays with particular scores. For example, an essay scoring a 6 must demonstrate "clear and consistent competence," "effectively and insightfully address the writing task," be "well-organized and fully developed," and display "consistent facility in the use of

language.” An essay scoring a 1 “demonstrates incompetent writing,” reflects “very poor organization” and “very thin development,” and contains “expressions so awkward that meaning is somewhat obscured.”

(Ex. 4 at 52-54; Ex. 10 at 4.)

48. Essay readers are given a training booklet of “Range Finders” consisting of sample essays that represent each score on the scoring scale to which they can refer during the reading process.

(Ex. 5 at 25.)

49. UT Austin conducts an “inter-rater reliability analysis” once every several years, to ensure consistency among readers.

(Ex. 4 at 13; Ex. 5 at 83; Ex. 10.)

50. The most recent inter-rater reliability analysis showed that essay readers scored within one point of each other between 88-90% of the time.

(Ex. 6 at 49.)

51. The senior readers are also trained on essay reading and thus are able to informally review and subtly monitor scoring.

(Ex. 5 at 85.)

b. Full File Readers

52. Full file readers review entire application files in order to determine applicants’ personal achievement scores.

(Ex. 4 at 26-27.)

53. Full file readers review essays as a component of an applicant’s file but the essays are not evaluated as a piece of writing.

(Ex. 4 at 16-17.)

54. In training Full file readers are given a sample set of files, with pre-marked scores, to exemplify each possible personal achievement score.

(Ex. 4 at 26-27.)

55. Full file readers review the sample set and conduct practice scoring rounds until there is consistency among the group.

(Ex. 4 at 27-29; Ex. 5 at 83.)

56. Full file readers are given a training booklet of “Range Finders” consisting of sample application files that represent each score on the scoring scale to which they can refer during the reading process.

(Ex. 5 at 25.)

57. The most recent inter-rater reliability analysis showed that Full file readers scored within one point of each other between 88-90% of the time.

(Ex. 6 at 49.)

D. The Passage of the Top Ten Percent Law and Its Impact on UT Austin Admissions

58. In 1997, the Texas legislature passed House Bill 588, Tex. Educ. Code § 51.803 (1997). House Bill 588 is often referred to as “HB 588” or the “Top 10 Percent Law”.

(Compl. ¶ 49, Answer ¶ 49; Ex. 6 at 14.)

59. Under the Top 10 Percent Law, Texas universities, including UT Austin, guarantee admission to public high school students who are in the top ten percent of their class, after six or seven semesters, and complete standard application requirements.

(Exhibit 32, House Bill 588, Tex. Educ. Code § 51.803 (1997); Exhibit 12, The University of Texas at Austin – *Types of Applicants*, available at <http://bealonghorn.utexas.edu/freshmen/after-you-apply/applicant-types/index.html>; Ex. 5 at 15.)

60. The Top 10 Percent Law applies to every public high school in Texas, as well as every private high school that ranks its students and makes those rankings available to university admissions officers.

(Ex. 32; Ex. 5 at 16.)

61. Students admitted pursuant to the Top 10 Percent Law do not fill UT Austin’s entire freshman class.

(Compl. ¶ 53, Answer ¶ 53.)

62. The Top 10 Percent Law guarantees every Top 10 Percent applicant admission to UT Austin, but not necessarily to the applicant’s preferred academic program at UT Austin.

(Ex. 5 at 14.)

63. At UT Austin, Top 10 Percent applicants who are not admitted to their first or second choice academic programs will be admitted to the Liberal Arts College as undeclared majors.

(Ex. 5 at 17.)

64. The Top 10 Percent Law effectively creates a large pre-qualified applicant pool for UT Austin, including a large number of pre-qualified minority applicants.

(Compl. ¶ 51, Answer ¶ 51.)

65. The legislative history of the Top 10 Percent Law indicates that the goal of the law was to not only “ensure a highly qualified pool of students each year in the state’s higher educational system” but also to promote diversity among the applicant pool in order to “ensure that a large, well qualified pool of minority students [is] admitted to Texas universities.”

(Exhibit 24, HB 588, House Research Organization Digest, Apr. 15, 1997; Compl. ¶ 52, Answer ¶ 52.)

66. UT Austin uses its AI/PAI full file review process to select additional applicants to fill the balance of the freshman class (with certain variances from the full file review process due to scholarship programs, extraordinary students, and certain portfolio or audition requirements for various programs).

(Compl. ¶ 54, Answer ¶ 54.)

67. HB 588 does not apply to the School of Architecture or the College of Fine Arts.

(Ex. 5 at 92.)

68. In an October 19, 2000 press UT Austin President Larry R. Faulkner stated that “the Top 10 percent law has enabled us to diversify enrollment at UT Austin with talented students who succeed. Our 1999 enrollment levels for African American and Hispanic freshmen have returned to those of 1996, the year before the *Hopwood* decision prohibited the consideration of race in admissions policies.”

(Exhibit 28, *The “Top 10 Percent Law” is Working for Texas*, Dr. Larry Faulkner, President, The University of Texas at Austin, October 19, 2000; Compl. ¶ 58, Answer ¶ 58.)

69. In an October 19, 2000 press release UT Austin President Larry R. Faulkner stated that “minority students have earned higher grade point averages last year [in 1999] than in 1996 and have higher retention rates. An impressive 94.9 percent of 1998 African American freshmen returned to enroll for their sophomore year 1999. For Hispanics, 85.8 percent returned for their second year. So, the law is helping to create a more representative student body and enroll students who perform well academically.”

(Ex. 28; Compl. ¶ 59, Answer ¶ 59.)

70. In a January 16, 2003 press release, UT Austin stated that “[t]he University of Texas at Austin has effectively compensated for the loss of affirmative action, partly by increasing recruiting and financial aid for minority students.”

(Exhibit 29, *The University of Texas at Austin’s experience with the “Top 10 Percent” Law*, January 16, 2003; Compl. ¶ 60, Answer ¶ 50.)

71. In a January 16, 2003 press release, UT Austin stated that “the first-year class included 272 African Americans, or 3.4 percent of the total of 7,936. It also included 1,138 Hispanics, or 14.3 percent of the total. The percentage of entering African American and Hispanics in the Fall of 1996, the year the 5th Circuit Court of Appeals’ decision struck down the use of affirmative action in Texas, was 4 and 14, respectively.”

(Ex. 29; Compl. ¶ 61, Answer ¶ 61.)

72. In a January 29, 2003 press release, UT Austin announced that “[d]iversity efforts at The University of Texas at Austin have brought a higher number of freshman minority students—African Americans, Hispanics and Asian Americans—to the campus than were enrolled in 1996, the year a court ruling ended the use of affirmative action in the university’s enrollment process. A report by the university’s Office of Institutional Research for the 2002 fall/summer enrollment shows there were 266 African Americans, 932 Hispanics and 942 Asian Americans enrolled as first-time freshmen at the university in 1996. The numbers of African Americans and Hispanics dropped after the Hopwood ruling, although the figures for Asian Americans increased. In 1997, the numbers for first-time freshmen were down to 190 African Americans, 892 Hispanics and 1,130 Asian Americans. More recent enrollment figures show a more encouraging trend. The summer/fall 2002 semester report shows that first-time freshmen enrollment for all three ethnic groups has increased to a level above the 1996 pre-Hopwood figures. Minority enrollment last fall included 272 African Americans, 1,137 Hispanics and 1,452 Asian Americans. . . .”

(Exhibit 30, *Enrollment of first-time freshman minority students now higher than before Hopwood court decision*, January 29, 2003; Compl. ¶ 62, Answer ¶ 62.)

E. The *Grutter* Decision and Its Impact on UT Austin Admissions

73. *Grutter v. Bollinger*, 539 U.S. 306 (2003), abrogated the *Hopwood* decision. *Grutter* upheld the University of Michigan’s use of race as a factor in its law school admissions program.

74. In a June 23, 2003 press release, UT Austin stated that “Dr. Larry R. Faulkner, president of The University of Texas at Austin, said the rulings [in *Grutter*] sweep away the restrictions of the 1996 *Hopwood* decision, a decade long case that eliminated the consideration of race.”

(Exhibit 31, *The University of Texas at Austin reacts to the Supreme Court’s affirmative action decisions*, The University of Texas at Austin, June 23, 2003; Compl. ¶ 78, Answer ¶ 78.)

75. In a June 23, 2003 press release, UT Austin President Larry R. Faulkner stated that “[t]he University of Texas at Austin will modify its admissions procedures to comply with the court’s rulings in time for the Fall 2004 semester.... This will include implementing procedures at the undergraduate level that combine the benefits of the Top 10 Percent Law with affirmative action programs that can produce even greater diversity.”

(Ex. 31; Compl. ¶ 79, Answer ¶ 79.)

76. On August 6, 2003, the Board of Regents of the University of Texas System adopted a resolution authorizing each System campus to consider whether or not to alter their admissions policies in light of *Grutter*.

(Exhibit 18, Roeckle Aff.; Exhibit 19, Frederick Affidavit (Exhibit A, *The Minutes of the Board of Regents of the University of Texas System*, August 6-7, 2003 at 4-5).)

77. The resolution required “individualized and holistic review of applicant files in which race and ethnicity are among a broader array of qualifications and characteristics considered.”

(Ex. 19 at 4-5.)

78. The resolution required that any admissions plan that considers race or ethnicity “must also provide for a periodic review of whether, and to what extent, the plan is still needed or needs revisions.”

(Ex. 19 at 4-5.)

79. UT Austin maintained application, admission, and enrollment figures during 1997-2004.

(Ex. 25 at 4-5, Tables 1, 1a.)

Application Stage									
		White				African-American			Total
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	Students
1997			9134	61.0%			639	4.3%	14982
1998			10138	60.4%			660	3.9%	16797
1999	2753	8298	11051	58.4%	268	762	1030	5.4%	18930
2000	3182	9555	12737	59.1%	291	895	1186	5.5%	21539
2001	3213	8510	11723	55.9%	245	808	1053	5.0%	20986
2002	3527	9076	12603	56.8%	278	881	1159	5.2%	22179
2003	3996	9948	13944	56.9%	326	1025	1351	5.5%	24519
2004	3817	8600	12417	54.0%	428	1028	1456	6.3%	23008

	Hispanic				Asian-American				Total
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	Students
1997			1955	13.0%					14982

1998			2338	13.9%			2491	14.8%	16797
1999	911	1920	2831	15.0%	998	1670	2668	14.1%	18930
2000	1020	2067	3087	14.3%	1034	1905	2939	13.6%	21539
2001	1012	2152	3164	15.1%	1081	2042	3123	14.9%	20986
2002	1177	2310	3487	15.7%	1211	2048	3259	14.7%	22179
2003	1424	2677	4101	16.7%	1250	2189	3439	14.0%	24519
2004	1451	2584	4035	17.5%	1257	2005	3262	14.2%	23008

Admission Stage									
	White				African-American				Total Students
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
1997			7964	64.8%			419	3.4%	12289
1998			7659	64.0%			401	3.3%	11975
1999	2753	4668	7421	62.1%	268	249	517	4.3%	11949
2000	3182	4980	8162	61.6%	291	271	562	4.2%	13256
2001	3213	4574	7787	61.2%	245	200	445	3.5%	12733
2002	3527	4731	8258	61.3%	278	216	494	3.7%	13476
2003	3996	2856	6852	59.6%	326	122	448	3.9%	11504
2004	3817	2997	6814	57.8%	428	141	569	4.8%	11788

	Hispanic				Asian-American				Total Students
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
1997			1592	13.0%					12289
1998			1620	13.5%			1942	16.2%	11975
1999	911	794	1705	14.3%	998	972	1970	16.5%	11949
2000	1020	803	1823	13.8%	1034	1117	2151	16.2%	13256
2001	1012	803	1815	14.3%	1081	1117	2198	17.3%	12733
2002	1177	768	1945	14.4%	1211	1087	2298	17.1%	13476
2003	1424	371	1795	15.6%	1250	741	1991	17.3%	11504
2004	1451	460	1911	16.2%	1257	756	2013	17.1%	11788

Enrollment Stage									
	White				African-American				Total Students
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
1997	1408	3322	4730	66.8%	50	140	190	2.7%	7085
1998	1497	2902	4399	65.2%	69	130	199	3.0%	6744
1999	1620	2827	4447	63.2%	160	126	286	4.1%	7040
2000	1921	2880	4801	62.5%	156	140	296	3.9%	7686
2001	1942	2505	4447	60.6%	137	105	242	3.3%	7337
2002	2203	2679	4882	61.5%	156	116	272	3.4%	7935
2003	2378	1488	3866	59.1%	194	73	267	4.1%	6544
2004	2270	1631	3901	57.4%	225	84	309	4.5%	6796

	Hispanic				Asian-American				Total Students
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	
1997	358	534	892	12.6%	505	625	1130	15.9%	7085
1998	414	477	891	13.2%	519	614	1133	16.8%	6744
1999	513	463	976	13.9%	609	612	1221	17.3%	7040

2000	591	420	1011	13.2%	653	672	1325	17.2%	7686
2001	575	449	1024	14.0%	718	695	1413	19.3%	7337
2002	703	434	1137	14.3%	800	652	1452	18.3%	7935
2003	858	210	1068	16.3%	781	372	1153	17.6%	6544
2004	887	262	1149	16.9%	776	442	1218	17.9%	6796

F. The Addition of Race as a Factor and Its Impact on UT Admissions

80. In August 2004, the UT System approved a revised admissions policy for UT Austin that included an applicant's race as a factor.

(Ex. 9 at 2.)

81. This change took effect starting with applications for the entering class of 2005.

(Compl. ¶ 83, Answer ¶ 83.)

82. Race was added to the "special circumstances" considered when evaluating a candidate's personal achievement score and calculating his PAI.

(Ex. 9 at 2; Ex. 17 ¶ 4.)

83. The addition of race as a factor in admissions was intended to increase racial diversity at UT Austin by increasing the enrollment of "under-represented" minorities.

(Ex. 8 at 23-24, 34, 57.)

84. UT Austin considers African-Americans and Hispanics under-represented minorities but does not consider Asian-Americans to be under-represented minorities.

(Tr. of Prelim. Inj. Hr'g (May 19, 2008) at 64 ¶16-17.)

85. UT Austin added race as a factor in its admissions decisions because it views race as an important credential that helps the University understand the applicant and evaluate his or her circumstances.

(Ex. 5 at 55, 59.)

86. The consideration of race helps UT Austin examine the student in "their totality," "everything that they represent, everything that they've done, everything that they can possibly bring to the table."

(Ex. 5 at 55.)

87. According to UT Austin, racial diversity captures a student's awareness of his own environment and the environment of others.

(Ex. 5 at 61.)

88. According to UT Austin, the consideration of race as a factor helps UT Austin put into perspective what a student has accomplished in his high school career.

(Ex. 5 at 62.)

89. An applicant's race is on the front page of their application file; file readers know the applicant's race when they review an applicant's file.

(Ex. 5 at 19; Ex. 4 at 36-37.)

90. At UT Austin race is viewed favorably in an applicant's file when it shows the context of an applicant's cultural awareness and racial experiences.

(Ex. 5 at 57; Ex. 4 at 30.)

91. The consideration of race may be beneficial to minorities or non-minorities.

(Ex. 5 at 56.)

92. The factor of race, just like any other factor, can "make a difference" to an applicant's personal achievement score.

(Ex. 8 at 52-53; Ex. 5 at 67.)

93. Using race in admissions helps UT Austin achieve racial diversity.

(Ex. 5 at 62.)

94. Characteristics other than race promote the kinds of diversity other than racial diversity.

(Ex. 8 at 60.)

95. The addition of race as a factor in admissions has increased enrollment of under-represented minorities.

(Ex. 6 at 36; Ex. 8 at 23-24, 34.)

96. UT Austin has not tracked or measured the impact of race as a factor in its admissions decisions. UT Austin is unable to determine how much the consideration of race in admissions has increased the enrollment of under-represented minorities.

(Ex. 8 at 39.)

97. UT Austin has not determined what level would constitute critical mass of the enrollment of under-represented minority students.

(Ex. 2, Response to Request for Admission 3.)

98. UT Austin has not established a goal, target, or other quantitative objective for the admission and/or enrollment of under-represented minority students for any of the incoming classes admitted in 2003 through 2008.

(Ex. 2, Response to Request for Admission 2.)

99. UT Austin does not have a projected end date by which it intends to cease using race as a factor in undergraduate admissions decisions.

(Ex. 2, Response to Request for Admission 6.)

100. UT Austin tracks the academic performance of students by grade point average (GPA).

(Ex. 9 at 12, Table 6.)

101. The academic performance of students admitted pursuant to the Top Ten Percent Law is higher than the performance of students admitted outside of the Top Ten Percent Law.

(Ex. 6 at 22; Ex. 9 at 12-15, Tables 6, 6a, 6b, 6c, 6d.)

Mean Freshman Year GPA								
	White		African-American		Hispanic		Asian-American	
	Top 10	Non-Top 10	Top 10	Non-Top 10	Top 10	Non-Top 10	Top 10	Non-Top 10
2003	3.32	3.06	2.79	2.55	2.96	2.87	3.41	3.17
2004	3.31	3.02	2.69	2.58	2.92	2.81	3.38	3.11
2005	3.28	3.08	2.66	2.50	2.94	2.80	3.33	3.11
2006	3.25	3.05	2.69	2.58	2.80	2.67	3.35	3.05
2007	3.25	2.95	2.65	2.42	2.70	2.47	3.22	2.94

102. The mean SAT scores for African-American and Hispanic students from 2003 to 2007 were lower than the mean SAT scores for White and Asian-American students during that time.

(Ex. 9 at 12-15 Tables 6, 6a, 6b, 6c, 6d.)

Mean SAT Scores for Enrolled Freshmen								
	White		African-American		Hispanic		Asian-American	
	Top 10	Non-Top 10	Top 10	Non-Top 10	Top 10	Non-Top 10	Top 10	Non-Top 10
2003	1262	1267	1063	1065	1100	1189	1278	1300
2004	1262	1267	1046	1116	1110	1189	1280	1304
2005	1268	1295	1059	1118	1122	1193	1288	1322
2006	1264	1286	1067	1086	1105	1154	1284	1310
2007	1275	1275	1078	1073	1115	1155	1277	1310

103. UT Austin maintained application, admission, and enrollment figures during 2005-2008.

(Ex. 9 at 6-8, Tables 1, 1a, 2.)

Application Stage									
	White					African-American			Total
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	Students
2005	3887	8665	12552	52.5%	441	1111	1552	6.5%	23925
2006	4297	10004	14301	52.4%	463	1452	1915	7.0%	27315
2007	4244	9415	13659	50.1%	485	1467	1952	7.2%	27237
2008	4440	9598	14038	47.6%	582	1652	2234	7.6%	29501

	Hispanic					Asian-American			Total
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	Students
2005	1656	2801	4457	18.8%	1302	2181	3483	14.6%	23925
2006	1790	3358	5148	18.8%	1572	2433	4005	14.7%	27315
2007	1974	3361	5335	19.6%	1571	2588	4159	15.3%	27237
2008	2218	3863	6081	20.6%	1744	2600	4344	14.7%	29501

Admission Stage									
	White					African-American			Total
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	Students
2005	3887	2858	6745	55.3%	441	176	617	5.1%	12207
2006	4297	2983	7280	54.7%	463	220	683	5.1%	13307
2007	4244	3066	7310	53.0%	485	262	747	5.4%	13800
2008	4440	2142	6582	51.2%	582	146	728	5.7%	12843

	Hispanic					Asian-American			Total
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	Students
2005	1656	527	2183	17.9%	1302	774	2076	17.0%	12207
2006	1790	616	2406	18.1%	1572	743	2315	17.4%	13307
2007	1974	658	2632	19.1%	1571	927	2498	18.1%	13800
2008	2218	403	2621	20.4%	1744	565	2309	18.0%	12843

Enrollment Stage									
	White					African-American			Total
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	Students
2005	2288	1550	3838	55.5%	252	99	351	5.1%	6912
2006	2524	1504	4028	54.3%	268	119	387	5.2%	7417
2007	2359	1480	3839	51.3%	284	147	431	5.8%	7479
2008	2480	1033	3513	52.3%	305	70	375	5.6%	6715

	Hispanic					Asian-American			Total
	Top 10	Non-Top 10	Total	%	Top 10	Non-Top 10	Total	%	Students
2005	966	278	1244	18.0%	782	410	1192	17.2%	6912
2006	1049	337	1386	18.7%	929	397	1326	17.9%	7417
2007	1109	361	1470	19.7%	1005	469	1474	19.7%	7479

2008	1164	174	1338	19.9%	1025	224	1249	18.6%	6715
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II. The Current Admissions Process at UT Austin

104. UT Austin divides applicants into three categories based on residential status: (1) Texas residents; (2) Non-residents; and (3) Foreign.

(Ex. 17 ¶ 7.)

105. Texas resident applicants who submit a completed freshman application by published deadlines are not denied admission to UT Austin.

(Ex. 9 at 3.)

106. Applicants who are offered fall admission to UT Austin are offered such as either: (1) automatic admission based on the Top Ten Percent Law; (2) automatic admission based on a high Academic Index (AI) score; or (3) admission based on Academic Index (AI) and Personal Achievement Index (PAI) scores.

(Ex. 17, ¶¶ 3-16.)

107. Remaining Texas resident applicants may also be offered admission through the Summer Program or the Coordinated Admissions Program (CAP) at UT Austin based on an additional review of their application once all of the fall decisions have been made.

(Ex. 17, ¶ 15.)

A. Top Ten Percent Law Admissions

108. The Top Ten Percent Law guarantees admission to UT Austin to students who rank in the top ten percent of their high school class after six or seven semesters.

(Ex. 32; Ex. 6 at 14; Ex. 12; Ex. 5 at 15.)

109. Top Ten Percent Law applicants are not, however, guaranteed admission to their first choice or second choice academic program.

(Ex. 5 at 15.)

110. UT Austin considers the academic programs which can fill 80% or more of their admissions spaces based on the preferences of applicants admitted pursuant to Top Ten Percent Law “impacted majors”.

(Ex. 5 at 31-32; Ex. 17 ¶ 11.)

111. UT Austin caps the percentage of Top Ten Percent Law applicants who will be automatically admitted to impacted programs at 75% of the program’s available

admission spaces. (Ex. 5. at 32-33; Ex. 17 ¶ 11.) For example, the School of Business capped its automatic admissions at the top 4%. (Ex. 5 at 33.)

112. Top Ten Percent Law applicants who are not within the cap for impacted programs will be considered for and offered admission to their second choice academic program based on the applicant's AI and PAI scores (which result from the review of the applicants' full application) as described below, or will be offered admission to UT Austin's Liberal Arts College as undeclared majors.

(Ex. 5 at 16-17.)

B. Automatic High Academic Index (AI) Admissions

113. Some number of non-Top Ten Percent Law applicants may be automatically admitted to a particular academic program based solely on their high AI score. (Ex. 17 ¶ 12.) UT Austin does not appear to maintain admission figures for the number of applicants admitted based on high AI scores.

C. Academic Index (AI)/Personal Achievement Index (PAI) Admissions

114. Non-Top Ten Percent Law applicants and those Top Ten Percent Law applicants who are not admitted to their first choice academic program receive AI and PAI scores based on their applications.

(Ex. 9 at 3.)

115. Applicants are placed on an admissions matrix for their preferred programs based on their AI/PAI scores where AI is on the X-axis and PAI is on the Y-axis.

(Ex. 9 at 3; Ex. 5 at 30; Exhibit 3, Sample Admission Matrices produced by Defendants' in response to Plaintiffs' Second Discovery Requests (Bates Nos. D-825, 847, 852, 870).)

116. For a given academic program, applicants are clustered into groups of applicants who share the same combined AI and PAI scores and plotted on the matrix for that academic program.

(Ex. 5 at 30-31; *see* Ex. 3.)

117. Associate Directors and/or Assistant Directors from each academic program work as "liaisons" during the AI/PAI admissions process.

(Ex. 5 at 30-31.)

118. The liaisons from the impacted programs are the first to look at their program's admissions matrix.

(Ex. 5 at 30-31.)

119. Based on the number of students admitted pursuant to the Top Ten Percent Law, the liaisons determine how many spaces remain in their academic programs.

(Ex. 5 at 73.)

120. The liaisons for the impacted programs draw lines on their admission matrices in a “stair-step” manner starting at the high-AI/low-PAI corner of the matrix.

(Ex. 5 at 42-43; *see* Ex. 3.)

121. When deciding where to draw the line, the liaisons aim to reward the most accomplished applicants based on their AI and PAI scores.

(Ex. 5 at 87.)

122. Every applicant who is represented on the matrix is either admitted or not admitted based on which side of the line he falls.

(Ex. 5 at 30-31.)

123. One-tenth of an AI point or one PAI point can be determinative as to whether an applicant is admitted or not admitted.

(Ex. 8 at 33.)

124. If an applicant is not admitted to his first choice academic program he will “cascade” into his second choice academic program to be considered on that matrix.

(Ex. 5 at 30-31.)

125. Once the lines have been drawn for the impacted programs, liaisons from the remaining academic programs go through the same stair-step line-drawing process for their programs.

(Ex. 5 at 30-32.)

126. Applicants who are not admitted to their second choice academic program will cascade into the Liberal Arts undeclared major matrix.

(Ex. 5 at 45.)

127. Liaisons have “full discretion” in the drawing of their lines on the program matrices.

(Ex. 5 at at 43.)

128. Texas residents not admitted to the fall freshman class may be considered for admission to either the UT Austin Summer Program or participate in the UT System Coordinated Admissions Program (CAP).

(Ex. 17 ¶ 15.)

129. UT Austin aims to enroll approximately 800 students in its Summer Program annually.

(Ex. 5 at 47.)

130. Because the Summer Program typically has an enrollment rate of approximately 50%, UT Austin offers admission to approximately 1600 students.

(Ex. 5 at 47.)

131. To determine who will be offered admission to the UT Austin Summer Program UT Austin selects to review the applications of approximately 3,000 students who remain on the Liberal Arts undeclared major matrix after fall admissions decisions are completed.

(Ex. 5 at 46-49.)

132. The students selected for consideration for the Summer Program are determined by the same stair-step line drawing process as used on the other admission matrices.

(Ex. 5 at 46-49.)

133. A senior application file reader will give a second review of the entire file for those students selected for consideration.

(Ex. 5 at 26, 46-49.)

134. During the second review process, applicants' AI and PAI scores are not controlling.

(Ex. 5 at 46-49; Ex. 17 ¶ 22.)

135. The second review process is intended to be individualized.

(Ex. 5 at 28.)

136. In 2008, of the 3,028 applicants who were considered for the Summer Program, (Ex. 5 at 46-49), 1433 were offered admission, (Exhibit 1, Defendants' Response to Plaintiffs' Interrogatories 1 through 5 (May 18, 2008), Response to Interrogatory No. 4)

(*See also* Ex. 17 ¶ 20.)

137. UT Austin maintained figures about the 2008 fall and summer freshman classes.¹

¹ Some of the figures offered by Defendants in response to Interrogatory No. 4 vary slightly from the figures included in the HB 588 Report of Oct. 27, 2008.

(Ex. 1, Response to Interrogatory No. 4.)

			HB588 Auto Admit			% Admit by Race	
Semester Applied	F04 Admit Decision	Race	No	Yes	Grand Total	No	Yes
20086 Summer Freshman	ADMIT	Not Reported	4	1	5	0.3%	1.7%
		AMERICAN INDIAN	7		7	0.5%	
		ASIAN AMERICAN	211	8	219	14.7%	13.8%
		BLACK	80	5	85	5.6%	8.6%
		FOREIGN	32	2	34	2.2%	3.4%
		HISPANIC	236	16	252	16.5%	27.6%
		WHITE	863	26	889	60.2%	44.8%
	Admit Total		1433	58	1491		
20086 Total			1433	58	1491		
20089 Fall Semester	ADMIT	Not Reported	9	4	13	0.4%	0.0%
		AMERICAN INDIAN	12	30	42	0.6%	0.3%
		ASIAN AMERICAN	351	1732	2083	16.6%	18.8%
		BLACK	46	576	622	2.2%	6.2%
		FOREIGN	266	242	508	12.6%	2.6%
		HISPANIC	165	2205	2370	7.8%	23.9%
		WHITE	1262	4428	5690	59.8%	48.0%
	Admit Total		2111	9217	11328		
20089 Total			2111	9217	11328		
<i>Grand Total</i>			<i>3544</i>	<i>9275</i>	<i>12819</i>		

138. Texas residents not admitted to the Summer Program at this phase of the admissions cycle are admitted to the Coordinated Admissions Program (CAP).

(Ex. 5 at 46-49.)

139. Applicants who participate in the CAP may transfer to UT Austin after their freshman year if they complete 30 approved credit hours at a participating UT System campus and have maintained a GPA of at least 3.2 at that school.

(Ex. 17 ¶ 15.)

D. Minority Outreach and Recruitment Efforts

1. Scholarships

140. UT Austin established the Longhorn Opportunity Scholarship to benefit students who come from high schools in low income communities.

(Exhibit 7, Orr Dep. at 11-12; Exhibit 14, The University of Texas at Austin – Texas Scholarships – *Longhorn Opportunity Scholarship*, available at <http://www.texasscholarships.org/types/osfs/los.html>.)

141. The Longhorn Opportunity Scholarship was designed to, among other things, boost minority enrollment.

(Ex. 7 at 17.)

142. The 70 high schools which participate in the Longhorn Opportunity Scholarship were selected on the basis of socioeconomic status, population of first generation students, and percentage of students who sent test scores from the schools.

(Ex. 7 at 11-12; *see also* Exhibit 20, Orr Aff. ¶ 7.)

143. UT Austin established the President's Achievement Scholarship which is a need-based scholarship that is based on a student's family income, high school characteristics, and student's academic performance relative to others in the high school.

(Ex. 7 at 18; Exhibit 15, The University of Texas at Austin – Texas Scholarships – *President's Achievement Scholarship*, available at <http://www.texasscholarships.org/types/osfs/pas.html>; Ex. 20 ¶ 6.)

144. According to UT Austin, the President's Achievement Scholarship has the residual effect of promoting minority enrollment.

(Ex. 7 at 18.)

145. UT Austin established the First Generation Scholarship which is a need-based scholarship available to students who are the first in their family to attend college.

(Ex. 7 at 18-19; Exhibit 16, The University of Texas at Austin – Texas Scholarships – *First Generation Scholarship* available at http://www.texasscholarships.org/types/osfs/first_gen.html; Ex. 20 ¶ 9.)

146. According to UT Austin, the First Generation Scholarship helps promote minority enrollment.

(Ex. 7 at 18-19.)

147. According to UT Austin, there is a disproportionate representation of minorities who classify as low income and first generation in Texas and are therefore possible candidates for Longhorn Opportunity Scholarships, President's Achievement Scholarships, and First Generation Scholarships.

(Ex. 7 at 20.)

148. The Longhorn Opportunity Scholarship, President's Achievement Scholarship, and First Generation Scholarship all began in the late 90s.

(Ex. 7 at 17.)

149. These scholarships have helped increase minority enrollment at UT Austin.

(Ex. 8 at 29.)

150. Although the scholarships increase minority enrollment, UT Austin does not keep track of the precise impact of these scholarship initiatives on minority enrollment.

(Ex. 7 at 20.)

151. UT Austin established the Keep Texans in Texas scholarship to match scholarships from out-of-state schools for students from under-represented Texas high schools.

(Ex. 20 ¶ 8.)

2. Outreach Centers and Programs

152. Since 1996, UT Austin has established additional outreach centers throughout the state.

(Ex. 7 at 8, 12; Ex. 20 ¶ 12.)

153. The outreach centers offer information sessions on admissions, hold receptions, and serve as offices for counseling staff who attend college night programs and visit high schools in their regions.

(Ex. 7 at 13-14.)

154. UT Austin hosts various programs such as the “Longhorn Lock-In” event, “Longhorn for a Day” event, and the UT Scholars program to introduce high school students to the university.

(Ex. 20 ¶ 17-19.)

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